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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Agus et al. Application No.: 09/674,975 Filed: 11/7/2000 Title: Compositions and Methods for Active Vaccination Attorney Docket No.: MSK.P-039	Group Art Unit: 1642 Examiner: Ungar, S.

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Assistant Commissioner for Patents
Washington, D.C. 20231

RESPONSE TO SECOND RESTRICTION REQUIREMENT

Dear Sir:

This is in response to the second Restriction Requirement mailed March 25, 2003 for the above-captioned application. Reconsideration or clarification of the restriction requirement is requested.

On January 13, 2003, the Examiner for this application issued a restriction requirement for the above-referenced application. Applicants responded to that restriction requirement by electing claim 9-11 **with traverse**, and by making amendment to the claims to facilitate prosecution. In that response, Applicants carefully explained why all of the remaining claims were drawn to a common inventive concept, as that term is used in PCT practice, which is applicable since this is a 371 national phase application. The claims now pending are directed to a vaccine composition (as set forth in claims 13, 16, 17 and 24) and a method of using this composition as set forth in elected claims 9-11 and the other set of method claims 12 and 21-23,

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I hereby certify that this paper and any attachments named herein are transmitted to the United States Patent and Trademark Office, Fax number: 703 308 4315 on April 23, 2003.

Marina T Larson

Marina T. Larson, PTO Reg. No. 32,038

April 23, 2003
Date of Signature

which specify the disease state of a patient treated using the method but otherwise are not different from claims 9-11. Claim 9 is therefore generic with respect to claims 12 and 21-23.

The Examiner issued a second restriction requirement on March 25, 2003. However, Applicants do not understand this paper, nor the response the Examiner is expecting. The Examiner states that Applicants arguments are not convincing but does not explain why there is a lack of unity of invention.

For example, the Examiner states that the claims are not drawn to the first invention in the application as originally filed, i.e., claims 1-8. This is true, but once the Examiner issues a restriction requirement, the Applicants is entitled to elect a group as specified by the Examiner and this has been done. Furthermore, the Examiner has not offered any reasons why this section of the rules has any bearing on whether or not the claims as now presented possess unity of invention. There is surely nothing in the PCT-related rules which forecloses addition of claims. Furthermore, although the Examiner has referred on Page 4 of the restriction requirement to Groups III-VII, there is no identification of what claims fall into what groups. Accordingly, consideration of all of the pending claims or a complete explanation as to why there is allegedly a lack of unity of invention to facilitate review of the restriction requirement is requested.

The Examiner also added a requirement for a species election as between Seq. ID No. 1 and Seq. ID No. 2 based on 35 USC § 121. The Examiner has not pointed out any basis for the application of this section of the statute to a PCT National Phase application, which is supposed to be governed under Unity of Invention standards, not restriction practice, and Applicants submit that it is improper. Nevertheless, to provide a complete response, Applicants hereby elect

Group I, that is the human as opposed to the murine CD20 fragment, **with traverse**, because the imposition of a species restriction is improper.

Respectfully Submitted,

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